BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2009-479-WS - ORDER NO. 2011-75

MARCH 4, 2011

IN RE:	Application of United Utility Companies, Incorporated for Adjustment of Rates and Charges and Modification to Certain Terms and Conditions for the Provision of Water and Sewer Service	)))))	ORDER DENYING REHEARING, RECONSIDERATION, AND BOND

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition for Rehearing or Reconsideration and, Alternatively, Request for Approval of Bond ("Petition"), filed by United Utility Companies, Incorporated ("United" or "the Company"), pursuant to our issuance of Order No. 2010-375 ("Order") in this Docket. Responses to the Petition were filed by the Office of Regulatory Staff ("ORS"), and North Greenville University ("NGU"). Because of the reasoning as outlined below, we deny rehearing, reconsideration, and the request for approval of a bond.

At hearings prior to the issuance of Order No. 2010-375, the Commission was presented with credible evidence of unbilled water and sewer revenue which could have a material impact upon the future revenue requirement for the Company. Because the Commission determined that a significant and un-calculable amount of unbilled revenue rendered it unable to ascertain the Company's true revenue requirement, it denied the Company's rate request.

The Company now complains that the Commission violated its due process rights, alleging that the Commission did not put the Company on notice that the number of occupied but unbilled premises in its systems statewide would be at issue or that it would be required to provide this information on a statewide basis in order for the Commission to rule affirmatively on the Application.[1] (Petition at 3.) While United allows that it did have the opportunity to respond to the public witness testimony regarding three named subdivisions where a significant percentage of residents were receiving sewer service without being billed, it alleges that it was not afforded a similar opportunity to address any issues related to unbilled and served premises in all of the other subdivisions that it serves. (Id. at 3-4.) United asserts that it did not have an opportunity to conduct its own investigation to determine the number of its billable premises which were being occupied and receiving sewer service without United's knowledge, and to present that information to the Commission. (Id. at 4.)

The Company claims that the Order assumed that 11% of the Company's billable premises are occupied but not billed and that United would have therefore realized $86,952 in additional test year revenue if those premises were billed.[2] (Id. at 2-3.) The

[1] As an initial matter, it is not the Commission's responsibility to tell a petitioner how to present its case. The Company is aware that a fundamental part of presenting a successful case to the Commission requires that it be able to determine the appropriate revenue requirement for the Company's services. Further, as discussed below and as the Order reflects, the Company was made specifically aware of the issue approximately one month prior to the merits hearing in Columbia, when a customer at the Piedmont night hearing (Ms. Nesbitt) testified that she was aware of residents of the Canterbury subdivision who were receiving service without being billed. (Order No. 2010-375 at 11-12; Tr. 2 at 167-169.) Also, two customers who testified at the beginning of the Columbia merits hearing in this case – Mr. Metts and Mr. Davis – called into question the number of unbilled and served premises in two subdivisions (River Forest and Stone Creek) in addition to Canterbury. (Order No. 2010-375 at 12; Tr. 5 at 326, 341-342.)

[2] As discussed in more detail infra p. 7, the $86,952 calculation was merely illustrative, extrapolating out what impact an 11% unbilled percentage would have as indicated by the three subdivisions that had been surveyed.

Company alleges that it was not aware that it should tailor its testimony to that argument and was prejudiced by the lack of notice in this regard, claiming it had no ability to present evidence or cross-examine witnesses in the case. (Id. at 4-5.)

The Company's arguments on the due process issues are unavailing. (See Order No. 2010-375 at 12-17.) The issue of unbilled sewer revenue was first raised at the Piedmont night hearing by Ms. Nesbitt, held on February 25, 2010, almost four weeks prior to the Commission's "merits" hearing in Columbia on March 23, 2010. (Id. at 11-12.) The issue was raised again at the Columbia hearing by Mr. Metts and Mr. Davis. (Id.) United **did not object** to this testimony. Rather, the Company specifically responded to the customers' testimonies that there were unbilled sewer revenues in specific neighborhoods through the testimony of Company witness Lubertozzi. (Id. at 12-13.)

Mr. Lubertozzi explained that the Company had performed a vacancy survey of the neighborhoods referenced in the Piedmont night hearing and the merits hearing, i.e. Canterbury, River Forest, and Stone Creek. As a result of that survey, the Company found that 51 customers out of a total of 464 billable customers were receiving sewer service without being billed, which is approximately 11%. Under cross-examination and questions from the Commissioners, Mr. Lubertozzi stated that the Company was conducting a vacancy survey for its other subdivisions, but that these surveys were incomplete. No request was made by the Company for the Commission to either reserve a late-filed exhibit so that the results of these surveys could be made known to the Commission, nor were additional hearings requested on this issue, prior to issuance of

Order No. 2010-375. When questioned as to how unbilled sewer revenue might impact the rate case, Mr. Lubertozzi further explained that the Company has customers in the present down economy that are leaving without notice, but that the Company would continue to send a bill for some period of time. The witness stated that perhaps a new customer would move in to the premises, but that the new customer would not receive a bill in that new customer's name. (Tr. 6 at 773-774, 786-788.)

This exchange in the record was not limited to just the discussion of the three subdivisions surveyed. The Company inserted evidence into the record that not only demonstrated a significant unbilled sewer revenue problem in the three subdivisions surveyed, but also raised an inference of a comprehensive problem of some degree within all twelve subdivisions. Indeed, the Company stated that not only had it carried out the surveys in the three subdivisions in response to the public witness testimony, but also indicated that it was carrying out comprehensive vacancy surveys in the other Company-served subdivisions as well. (Tr. 6 at 773-774.)

In response to the testimony of Mr. Metts and Mr. Davis, the Company offered rebuttal testimony which not only substantiated those witnesses' testimony that there were unbilled occupied premises in the three neighborhoods, but also raised the same issue as to other areas of the Company. Once the Company offered Mr. Lubertozzi as a rebuttal witness on the issue of unbilled revenue, the Company opened the door to the issue of the impact to the rest of the system, and placed itself on notice that this was an issue in the case. The burden to follow through in this area was on the Company. This Commission was under no obligation to make an unsolicited offer to the Company for

further opportunities to present evidence before it, in the face of the Company's failure to attempt to preserve its right to do so at the hearing.

Further, the Company failed to preserve its due process objection by its failure to object to the testimony of Ms. Nesbitt, who testified on the issue at the Piedmont hearing, and its failure to object to the testimony of Mr. Metts and Mr. Davis, who testified at the Columbia merits hearing. At the beginning of the Piedmont hearing, the Company made its standard continuing objection "to testimony not substantiated by data or not based upon scientific criteria" (Tr. 2 at 112), and it later filed with the Commission on April 8, 2010, a letter objecting to testimony provided at the Piedmont hearing that was "not substantiated by data or based upon scientific criteria." Tellingly, the Company made no objection to the testimony of Ms. Nesbitt, even though she raised the issue of unbilled sewer revenue. (Tr. 2 at 167-169.) Nor did the Company object to the testimony of Mr. Metts or Mr. Davis at the Columbia hearing regarding unbilled sewer revenue. The failure to make an objection at the time that evidence is offered constitutes a waiver of the right to object. McCreight v. MacDougall, 248 S.C. 222, 149 S.E. 2d 621 (1966), cited in Cogdill v. Watson, 289 S.C. 531, 537; 347 S.E. 2d 126, 129 (Ct. App. 1986).

In addition, United asserts that the Commission departed from prior precedent and violated the due process rights of the Company because the Commission did not establish another hearing to afford the Company the opportunity to conduct an investigation and present information to the Commission, nor did the Commission request a late-filed exhibit from the Company on the issue of unbilled revenue for the entire United sewer system. The Company had an opportunity to request that the record be held open for a

late-filed exhibit and/or that further hearings be held on this issue prior to the Commission decision on the merits of this case; however, the Company failed to avail itself of such opportunities prior to raising the issue for the first time in its Petition for reconsideration. Therefore, no due process violation occurred under these circumstances. Additionally, we hold that this Commission has no obligation to, nor would it be proper to require this Commission to, solicit information to address the weaknesses in the Company's case. The Company has the burden of proving its case. The general rule in administrative proceedings is that an applicant for relief, benefits, or a privilege has the burden of proof. Leventis v. South Carolina Department of Health and Environmental Control, 340 S.C. 118, 530 S.E. 2d 643 (2000).

United also contends that the approach adopted by our Order No. 2010-375 disregards the fundamental principles of utility rate making in that the Company is entitled to an opportunity to earn a fair and reasonable return, and just and reasonable rates may be determined even where a utility has not collected all of the revenue to which it might otherwise be entitled. (Petition at 6.) We disagree. In order to establish just and reasonable rates, the Commission must be able to properly determine the revenue requirements of the Company. (See Order No. 2010-375 at 11.) Based on the evidence in the record of this case, this Commission could not determine the amount of additional sewer service revenue as it was unknown whether the billing determinants included those occupied but unbilled premises. As a result, this Commission could not determine the proper amount of the revenue increase or set a just and reasonable rate for the Company's service. The Company asserts that our Order disregarded or overlooked evidence from

ORS in reaching this determination; however, ORS's proposed order to the Commission in this case denied rate relief to the Company on the same grounds articulated in our Order.

United argues that the Commission could have imputed the amount of unbilled revenue for the entire system. (Petition at 6.) This is incorrect. Since the Commission did not know the depth of the problem of the sewer revenue for the entire system, this Commission would have been forced to speculate as to the amount to impute. The Company's witness testified that the survey of all of its systems was incomplete at the time of hearing. Therefore, while the vacancy survey described by Mr. Lubertozzi demonstrated that a substantial number – 11% – of surveyed customers were receiving sewer service without being billed, this survey only provided data for three of the twelve subdivisions. The Commission had no way to determine what percentage of premises were not being billed in the entire system because the vacancy survey for the entire system was incomplete. The amount of unbilled revenue system-wide could have been more than 11% or less than 11%. Not knowing the percentage of unbilled premises was fatal to United's case because no reliable estimate of unbilled revenue could be determined for all twelve subdivisions served by United.

Further, the Company cites Alpine Utilities rate case Order No. 2008-759 as an example of where this Commission imputed under-collected sewer revenue, and states that this Commission should have acted similarly in the present case. However, the Alpine case was different from the one at bar. In Alpine, the imputed revenue was easily calculated because it only involved two specific customers. Alpine had executed

contracts with two customers that established a rate lower than the Commission-approved tariff rate. In the present case, this Commission had no way of calculating an amount to impute, due to the incompleteness of the vacancy survey.

Clearly, this Commission properly relied on the evidence in the record which was introduced by the Company, and reasonably determined that the increase in revenue could not be determined under the circumstances. Contrary to the Company's statement that this Commission relied upon customer testimony in this regard, Order 2010-375 extensively references testimony of the Company witnesses on the issue of unbilled sewer revenue. (Order No. 2010-375 at 11-17.) The Company did not object to the testimony of Mr. Metts and Mr. Davis, but instead, substantiated their testimony through the rebuttal of Company witness Lubertozzi, who also acknowledged that the Company was conducting a system-wide survey. Given the testimony in the record, we believe that it was reasonable for this Commission to conclude that an increase in the rate for the Company's service could not be calculated. Further, this Commission properly determined that it had held a fair hearing on these matters under the circumstances of this case. It is within the Commission's discretion to decide whether to grant the Company's request for a rehearing, but, under these circumstances, the Company is not entitled to a rehearing (or reconsideration) as a matter of law.

United also complains that the Commission denied rate relief for the Company's water operations. The Company alleged that the Commission's denial was improperly based upon inferences from the testimony of two customers concerning the timing of the issuance of bills, from which the Commission determined that the Company is not

reading water meters regularly, nor conducting the proper assessment of its water system to determine whether all water customers are being billed or billed correctly. (Petition at 8-9.) Initially, we would point out that in Hilton Head Plantation Utilities, Inc. v. The Public Service Commission of South Carolina, 312 S.C. 448, 441 S.E. 2d 321 (1994), the South Carolina Supreme Court affirmed this Commission's decision which was based on the testimony of one public witness, and the inferences made from that witness' testimony. Therefore, the fact that our decision was based on the testimony of two public witnesses alone is not erroneous, nor is the fact that we drew reasonable inferences from their testimony, i.e., that water meters were not being read in a timely manner, nor was regular billing occurring. It was simply not possible from the testimony presented to determine that all customers were being billed correctly for their water usage. The amount of rate increase required cannot be determined without knowing the correct amount of test year water usage. For these reasons, we held that we could not determine the Company's water revenue requirements. We believe that our holding in this regard was proper, and was based on substantial evidence in the record. There was no "surmise, conjecture, or speculation." (Petition at 9.) This allegation of error is unavailing.

Although in this case, the Company's failure to demonstrate a revenue requirement for water **and** sewer left this Commission unable to determine a revenue requirement for the entire Company, it would have been reasonable for the Commission to deny rate relief solely on the Company's failure to demonstrate its revenue requirement for the sewer **or** water portion of the case. This Commission has historically viewed revenue requirements on a whole-Company basis. (See, e.g. Application of Tega

Cay Water Service, Inc. for Adjustment of Rates and Charges and Modifications to Certain Terms and Conditions for the Provision of Water and Sewer Service, Docket No. 2009-473-WS, Order No. 2010-557 at 12.)

This Commission also remains concerned about the iron problems in the customers' water. ORS recommended that the Company increase system flushing to at least once per month. Mr. Haas testified that the Company will increase flushing to once per month as recommended by ORS; however, he stated that because the groundwater serving the Trollingwood subdivision has a very high iron content, removal of all iron is not possible. (Tr. 5 at 485-486.) Even though it is apparent that flushing alone may improve but not eliminate the problem of the iron content in the water in Trollingwood, it appears that the Company is at least recognizing that aesthetics of water are important to customers and impacts customer service. In addition to upgrading the filter system, United is volunteering to increase flushing of the lines in that subdivision to once per month. This response is a reasonable proposal, and shows that the Company is attempting to address the problem. As stated in our original order, we have adopted their proposal and look forward to reviewing the Company's progress in the area of water aesthetics in future cases, recognizing that the aesthetic quality of the water impacts customer service.

United further requested approval of a bond pursuant to S.C. Code Ann. Section 58-5-240 (D) (Supp. 2009), should we deny the Company's Petition. We must deny the Company's request, due to a fatal inconsistency in the body of the proposed bond document. The amount of the bond being requested for approval is unclear. The amount

of the bond is "written out" as "two hundred ninety seven thousand four hundred fourteen and No/100s Dollars." However, the amount requested in figures is "$311,426.00." Because of this discrepancy, this Commission is unable to determine what the true requested amount actually is, and must therefore deny approval of the bond.[3]

Because of the reasoning stated above, we deny rehearing and reconsideration in this case, and we deny approval of the proposed bond.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

John E. Howard, Chairman

ATTEST:

David A. Wright, Vice Chairman
(SEAL)

[3] By subsequent motion, on July 28, 2010, United corrected this discrepancy, and a bond of $311,426 was approved by this Commission in Order No. 2010-543.